

# Exhibit 131

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.*

Civil Action No. 07-10248-PBS

Exhibit to the July 24, 2009, Declaration of James J. Fauci  
In Support of Plaintiff's Motion for Partial Summary Judgment and  
In Opposition to the Roxane Defendants' Motion For Partial Summary Judgment

**From:** KAVANAUGH,MICHAEL PM BIPUS  
**Sent:** Monday, February 23, 1998 3:38 PM  
**To:** WATERER, JUDY ROXUS  
**Subject:** Overpayment Information

Hi Judy,

I thought you might be interested in this article. It confirms some of what Micky had told you but not that Dey had actually talked to the Medicare (HCFA) people.

Thanks for your help. If you hear of, or can find anything else out about Duovent I would appreciate hearing it.

Mike

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## Market Note

### Overpayments Likely To Prompt Changes; Drug Makers Should Not Be Hurt

Congress will likely take action this year to address the problem of Medicare overpayments for prescription drugs, an issue that was highlighted in a recent report from the Department of Health and Human Services (HHS) Office of Inspector General (OIG). We expect Congress to pass legislation to decrease Medicare reimbursements to health care providers, such as hospitals, physicians, pharmacies and other suppliers, for certain drugs prescribed for Medicare patients. Contrary to some investor concerns, we do not believe the changes in Medicare drug reimbursements will decrease pharmaceutical company revenues from Medicare-covered prescription drugs.

Medicare does not pay for over-the-counter drugs or many self-administered prescription drugs, but it does cover certain drugs used in conjunction with medical procedures such as chemotherapy and kidney dialysis. The Medicare payment for a covered drug is determined by its average wholesale price (AWP), using wholesale prices published by drug manufacturers. However, health care providers often pay considerably less than published wholesale prices, and so use of the AWP results in Medicare payments that are higher than actual drug costs. According to HHS, Medicare payments for 22 drugs exceeded the wholesale prices actually paid by providers by a total of \$447 million in 1996. This accounted for 29% of the \$1.5 billion spent by Medicare on these 22 drugs. For over one-third of the 22 drugs, Medicare paid more than two times the actual wholesale price available to health care providers. The beneficiaries of these overpayments are physicians, pharmacies and other prescription drug suppliers, but not pharmaceutical companies.

Medicare reimbursements for covered drugs were lowered from 100% to 95% of the AWP as of January 1, 1998, according to legislation passed last year. However, HHS and the Health Care Financing Administration (HCFA) do not believe that this cut is large enough to fully correct the overpayments. In its report, the HHS OIG recommends additional options including: payment ceilings for individual drugs; surveys to calculate the differences between actual and published wholesale prices; drug rebates similar to those used by Medicaid; competitive bidding in certain drug categories; and determinations of "inherent reasonableness" for drug payments. President Clinton has stated that he plans to introduce a proposal, similar to part of the Administration's 1998 budget proposal, that would set Medicare drug payments at the lowest of AWP, actual acquisition cost to the provider, median actual acquisition cost, or an amount otherwise determined under statute. This provision was supported by HHS and HCFA last year but was not included in the final budget passed by Congress.

To address the problem of Medicare overpayments for prescription drugs, the easiest solution both politically and practically appears to be the President's proposal to set payments at the lowest of AWP, actual acquisition cost, median actual acquisition cost, or a similar measure. As stated above, these changes should not affect pharmaceutical company revenues from Medicare-covered prescription drugs, because drug companies receive payment from health care providers, not Medicare. More complicated reforms (drug rebates, competitive bidding or inherent reasonableness) that could have the potential for broader impact, are unlikely to be considered, as HHS and HCFA are still working to implement many of the Medicare reforms passed last year.

Following is a summary table of 1996 Medicare overpayments for the 22 prescription drugs included in the HHS OIG study.

Drug Codes, Manufacturers, Brand Names	Average Medicare Allowed Amount	Actual Average Wholesale Price
J9217 Leuprolide acetate for depot suspension, 7.5 mg: TAP Pharmaceuticals'		
Lupron Depot	\$499.72	\$414.73
J7620 Albuterol sulfate, 0.083%, 1 ml, inhalation solution administered through DME: Schering's Proventil; Medeva's Airtet; Glaxo Wellcome's Ventolin; Dey Laboratories' generic	\$0.41	\$0.19
J9265 Paclitaxel, 30 mg: Bristol-Myers Squibb's Taxol	\$181.32	\$148.56
J9202 Goserelin acetate implant, 3.6 mg: Zeneca's Zoladex	\$378.29	\$329.43
J0640 Leucovorin calcium injection, 50 mg: Glaxo Wellcome's Wellcovorin; Immunex's generic	\$21.70	\$2.81
J9045 Carboplatin, 50 mg: Bristol-Myers Squibb's Paraplatin	\$82.76	\$67.64
J1440 Filgrastim (G-CSF) injection, 300 mcg: Amgen's Neupogen	\$154.65	\$123.39
J1441 Filgrastim (G-CSF) injection, 480 mcg: Amgen's Neupogen	\$246.34	\$196.76
Q0136 Epoetin alpha injection (for non-ESRD use), 1000 units: Amgen's Epogen; Ortho Biotech's Procrit	\$11.93	\$10.37
J2405 Ondansetron hydrochloride injection, 1 mg: Glaxo Wellcome's Zofran	\$6.08	\$4.28
J1625 Granisetron hydrochloride injection, 1 mg: SmithKline Beecham's Kytril	\$170.02	\$125.71
J1561 Immune globulin injection, intravenous, 500 mg: Bayer's Gamimune; Baxter Healthcare's Gammagard; Novartis' Sandoglobulin I.V.; Alpha Therapeutic's Venoglobulin; American Red Cross's Polygam	\$42.21	\$16.65
J7670 Metaproterenol sulfate, 0.4%, 2.5 ml, inhalation solution administered through DME:		

Boehringer Ingelheim's Alupent; Astra's, Roxane Laboratories', Day Laboratories' generic	\$1.23	\$0.41
J9182 Etoposide, 100 mg: Bristol-Myers Squibb's VePesid; Astra's, SuperGen's generic	\$137.57	\$70.91
J9181 Etoposide, 10 mg: Bristol-Myers Squibb's VePesid; Astra's, SuperGen's generic	\$14.14	\$8.02
J9000 Doxorubicin HCl, 10 mg: Pharmacia & Upjohn's Adriamycin; Sequus' Doxil; Bristol- Myers Squibb's Rubex; Astra's generic	\$44.19	\$13.65
J9031 BCG intravesical, per instillation: Connaught Laboratories' TheraCys	\$157.53	\$133.13
J7672 Metaproterenol sulfate, 0.6%, 2.5 ml, inhalation solution administered through DME: Boehringer Ingelheim's Alupent; Astra's, Roxane Laboratories', Dey Laboratories', Teva's generic	\$1.23	\$0.44
J9293 Mitoxantrone hydrochloride injection, 5 mg: Immunex' Novantrone	\$172.81	\$142.40
J9185 Fludarabine phosphate, 50 mg: Berlex Laboratories' Fludara	\$179.45	\$156.50
J9010 Doxorubicin HCl, 50 mg (code discount. 12/31/96): Pharmacia & Upjohn's Adriamycin; Sequus' Doxil; Bristol-Myers Squibb's Rubex; Astra's generic	\$207.12	\$65.4
J3370 Vancomycin HCl injection, up to 500 mg (code discount. for infusion 9/1/96): Eli Lilly's Vancocin; Lederle Standard's generic	\$9.44	\$4.42



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